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January 3, 2007

VIA HAND DELIVERY

Ms Mary W Dove
Commission Secretary
Federal Election Commission
999 E Street, N W
Washington, DC 20463

Re MUR 5758

Dear Ms. Dove

On behalf of respondent Pierce O'Donnell, we have enclosed one original and ten copies of Mr O'Donnell's supplemental probable cause brief in the above matter Please stamp the enclosed receipt copy and return it to our messenger

Thank you for your attention to these matters

Very truly yours,


Mark H Tuohey III
David E Hawkins

Attorneys for Pierce O'Donnell

Enclosures

cc Audra L Wassom, Esquire (with three copies of enclosure)

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BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of

Pierce O'Donnell

MUR 5758

SUPPLEMENTAL BRIEF OF RESPONDENT PIERCE O'DONNELL

1 I INTRODUCTION

2 After filing an initial brief on behalf of Respondent Pierce O'Donnell on December 11,
3 2006, undersigned counsel and Dr Mark J Mills met on December 19, 2006, with
4 representatives of the Office of General Counsel ("General Counsel") In response to issues
5 raised by General Counsel at that meeting, we present the following additional information
6 regarding Mr O'Donnell's background¹ This supplemental information further supports our
7 position that the Commission should not find probable cause to believe that Mr O'Donnell
8 knowingly and willfully violated 2 U S C § 441f because he lacked the mental capacity to form
9 the requisite specific intent due to his now diagnosed Bipolar Disorder

10 II ADDITIONAL BACKGROUND

11 A Impact of Bipolar Disorder on Law Practice

12 General Counsel posed several questions to Dr Mills about how Mr O'Donnell could
13 "compartmentalize" the effects of his severe mental illness in a way that his law practice
14 appeared not to be adversely impacted We have already noted in our initial brief that Bipolar
15 Disorder is unique among serious mental illnesses because it enables a person to thrive in certain
16 aspects of one's life (including professional, business, and artistic skills) while at the same time

¹ In our initial brief, we "specifically reserve[d] the right to supplement [our] brief in light of any developments at this meeting" with Dr Mills. O'Donnell Brief at 11 4-5 Like our initial brief and the subsequent meeting with Dr. Mills and General Counsel, the facts set forth in this supplemental brief are subject to Rule 408 of the Federal Rules of Evidence

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1 severely impairing the person in other aspects of their professional and personal lives
 2 O'Donnell Brief at 10² Dr Mills also noted that Mr O'Donnell is less vulnerable to hypomanic
 3 behaviors in connection with his law practice than in other areas of his life Dr Mills explained
 4 that Mr O'Donnell collaborates closely with other skilled attorneys and staff in an inherently
 5 and tightly structured process to which Mr O'Donnell has devoted his entire professional
 6 life - the practice of law These collaborations tend to contain or reduce his hypomanic
 7 outbursts, but they have not been entirely successful

8 In fact, there are numerous instances in which Mr O'Donnell's Bipolar Disorder had a
 9 negative impact on his practice Although Mr O'Donnell was able effectively to perform legal
 10 tasks, his professional and personal relationships have repeatedly suffered due to the hypomania
 11 and poor judgment which are classic symptoms of Bipolar Disorder For example, his
 12 relationships with other attorneys in his firm - both partners and associates - have significantly
 13 suffered as a result of his condition over the past six or seven years On at least three occasions,
 14 attorneys have precipitously left the firm as a direct result of Mr O'Donnell's harassing and
 15 derisive treatment of them These incidents involved sudden and unprovoked verbal outbursts
 16 that were sharp, biting, and sustained Dr Mills confirms that this conduct is classically

² The seminal text on psychiatry also recognizes the ability of those with Bipolar Disorder to realize compartmentalized successes while suffering grave dysfunction in other areas

Leadership and Creativity. Persons with hyperthymic temperament and soft bipolar conditions in general possess assets that permit them to assume leadership roles in business, the professions, civic life, and politics Increased energy, sharp thinking, self-confidence, and eloquence represent the virtues of an otherwise stormy life

Kaplan & Sadock, Comprehensive Textbook of Psychiatry § 14.6, at 1364 (7th ed 2000) (citing Akiskal, HS, The prevalent clinical spectrum of bipolar disorders Beyond DSM-IV, J Clin Psychopharmacol, 16(Supp).4S, 1996)

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1 emblematic of this type of mental illness in which the patient experiences a massive mood swing
2 in response to little or no provocation

3 Likewise, Mr O'Donnell's relationships with major clients have suffered as a result of
4 his severe irritability and poor judgment For example, Mr O'Donnell collaborated with his
5 former colleagues at the Kaye Scholer firm on major litigation work in defense of a large drug
6 manufacturer client After a series of negative personal interactions with the client's in-house
7 attorneys, Mr O'Donnell, while regarded as a brilliant strategist and courtroom advocate,
8 developed a reputation as having impulsive and irritable episodes in his dealings with people As
9 a result, he no longer represents that client or co-counsels with Kaye Scholer in any matters On
10 other occasions, Mr O'Donnell's abrupt and impulsive decision-making and extreme irritability
11 led to strained relationships with several major clients of the firm, who eventually decided to
12 work with other counsel

13 In particular, two individual clients developed difficult relationships with Mr O'Donnell
14 because of the erratic conduct he began to exhibit towards them Mr O'Donnell's emotional
15 outbursts, impatience, and judgmental reactions, which are all classic symptoms of Bipolar
16 Disorder, occurred with increasing frequency The clients became frustrated with Mr
17 O'Donnell's harsh outbursts and inability to sympathize with their situations, leading one client
18 ultimately to file a complaint with the California State Bar While the complaint was dismissed
19 because it was deemed a fee dispute, the client later filed a counterclaim alleging malpractice
20 when Mr O'Donnell's firm filed suit to collect a portion of an unpaid fee The matter was
21 settled before trial, but Mr. O'Donnell recognizes in hindsight that, because of his mental illness,
22 he did not properly manage this client relationship.

1 Mr O'Donnell's closest colleagues report that the onset of this behavior was progressive,
2 beginning in the late 1990s and growing more severe between 2000 and 2005 Before this
3 disturbing behavior began, Mr O'Donnell was a much-sought-after lawyer whose warm Irish
4 personality was a great asset in soothing anxious clients and winning the confidence of in-house
5 counsel As his mood swings became more severe and more frequent, however, his personality
6 changed for the worse, and his relationships with clients often suffered as a result

7 While those professional difficulties did not directly prevent the practice of law, they
8 nevertheless demonstrate that the effects of Mr O'Donnell's mental illness were not neatly
9 confined to areas outside his professional life It is also noteworthy that Mr O'Donnell's
10 colleagues have noted an improvement in his emotional stability since he has started a course of
11 prescription medication and more intensive therapy Dr Mills believes that this constitutes
12 further confirmation that Bipolar Disorder severely affected Mr O'Donnell's ability to control
13 his behavior during the period from 2000 to 2004

14 B Pay-for-Play

15 During our recent meeting, General Counsel suggested for the first time that they believe
16 Mr O'Donnell may have been motivated to assist in raising political contributions for Los
17 Angeles mayoral candidate James Hahn in 2000 and 2001 because of a desire to "Pay-for-Play,"
18 i.e., to offer campaign contributions in exchange for the promise of receiving legal work from the
19 City of Los Angeles In particular, General Counsel suggested that Mr O'Donnell's firm may
20 have been actively involved in municipal bond work for the City This issue can be laid to rest
21 definitively -- it has absolutely no merit

22 Neither Mr O'Donnell nor his firm has ever been involved in municipal bond work for
23 the City of Los Angeles or for any other client They are exclusively civil trial lawyers
24 Likewise, the firm has never handled port, airport, real estate, or any other non-litigation matters

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1 for the City of Los Angeles The firm's lawyers are not registered lobbyists, and Mr O'Donnell
2 has never engaged in lobbying work on behalf of clients with City business

3 Mr O'Donnell and his firm have been involved in matters with the City on only three
4 occasions, and in one of those instances, Mr O'Donnell actually sued the City The firm
5 represented the City in the early 1990s in litigation with the State of California to enjoin the
6 construction of a prison A few years later, the firm represented a developer in a construction
7 dispute against the City Finally, the firm assisted other firms in representing the City in the
8 recently settled Continental Forge antitrust litigation Before the City of Los Angeles filed its
9 lawsuit in that matter, Mr O'Donnell and other lawyers had already filed a class action lawsuit
10 on behalf of 13 million California consumers and the City of Long Beach While the City of Los
11 Angeles later became a client of the firm by joining the class, the City was not an original
12 plaintiff and its participation was not critical to the lawsuit or its successful outcome The firm
13 later withdrew from representing the City of Los Angeles in Continental Forge due to a potential
14 conflict of interest

15 This history demonstrates that work for or against the City of Los Angeles was irrelevant
16 to Mr O'Donnell's agreement to help raise funds for a mayoral candidate Mr O'Donnell had
17 known Mr Hahn for many years, admired him, and had previously supported him in races for
18 Los Angeles City Treasurer and City Attorney Finally, in settling the misdemeanor charges
19 with Mr O'Donnell regarding the Hahn contributions, the Los Angeles County District
20 Attorney's Office publicly acknowledged that there was no evidence of any "Pay-for-Play" in
21 that case

22 C Tort Reform

23 General Counsel also suggested a possible relationship between Mr O'Donnell's
24 agreement to raise campaign funds for John Edwards and his interest in protecting plaintiffs' trial

1 lawyers from federal tort reform proposals In fact, Mr O'Donnell was and still is opposed to
2 Senator Edwards' efforts to defeat tort reform Mr O'Donnell's history as a corporate defense
3 lawyer has been to support tort reform proposals that are anathema to the plaintiffs' bar The
4 bulk of his well-known legal career has been spent defending mass tort and personal injury cases
5 for Fortune 500 companies such as Lockheed Martin, Texaco, ConocoPhillips, Pfizer, Inc , W R
6 Grace & Co , and Baxter Indeed, Mr O'Donnell served for years on the California Tort Reform
7 Advisory Committee of Pfizer, Inc

8 Mr O'Donnell has never advocated or written against tort reform, nor has he been a
9 member of the American Trial Lawyers' Association ("ATLA"), a well-known group of
10 plaintiffs' counsel that actively opposes tort reform Instead, his professional memberships are
11 in distinguished international trial lawyer organizations that are balanced between plaintiffs' and
12 defense counsel, including the American College of Trial Lawyers, the International Academy of
13 Trial Lawyers, and the American Board of Trial Advocates Mr O'Donnell's desire to support
14 Senator Edwards resulted from requests he received from personal friends and from his
15 admiration of the candidate's advocacy on behalf of the poor and vulnerable, not from any desire
16 to advance an ideology on tort reform

17 D Relationship with Thomas Girardi, Esquire

18 General Counsel mentioned that Mr O'Donnell's interest in Senator Edwards' campaign
19 may have involved their mutual friend and prominent Los Angeles trial lawyer Thomas V
20 Girardi, a partner in the Los Angeles firm of Girardi and Keese While Messrs O'Donnell and
21 Girardi are close personal friends, Mr O'Donnell's desire to support Mr Girardi's candidate,
22 Senator Edwards, resulted from personal rather than professional considerations In fact, Messrs
23 O'Donnell and Girardi have a long history of opposing one another in the courtroom. For

1 example, in the spring of 2004, Mr. Girardi prosecuted a highly-publicized personal injury case
2 against Pfizer, Inc , that resulted in a defense verdict for Mr O'Donnell's client

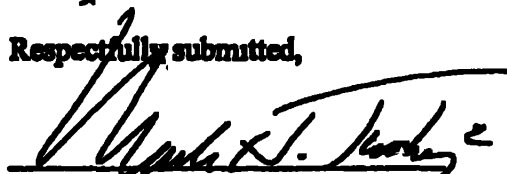
3 While these men have served as co-counsel in several cases, potential litigation referrals
4 from Mr Girardi - who most often has been Mr O'Donnell's opponent - were not a motivating
5 factor in Mr O'Donnell's agreement to assist in raising campaign contributions for Senator
6 Edwards Rather, Mr O'Donnell's friendship with and respect for Mr Girardi were motivating
7 factors in Mr O'Donnell's commitment to raise funds for the Edwards campaign

8 Reflective of his Bipolar Disorder, Mr O'Donnell agreed to raise an exorbitant sum of
9 money (\$50,000) for Senator Edwards when he had neither the organizational skills, the time, or
10 the ability, in the midst of very busy trial practice, to accomplish this overly ambitious goal Yet,
11 his hypomanic desire to make and honor a grave commitment triumphed over a more reasoned
12 response of being satisfied with the money that he could raise Here again, we see classic
13 hypomanic symptoms which seriously impaired Mr O'Donnell's judgment and controlled his
14 conduct in attempting to meet his grandiose commitments

1 **III CONCLUSION**

2 As explained in our initial brief and during our recent meeting with General Counsel,
3 incontrovertible psychological evidence establishes that Mr O'Donnell's severe mental illness of
4 Bipolar Disorder prevented him, as a matter of both fact and law, from forming a "knowing and
5 willful" intent to commit the alleged violations of section 441f Mr O'Donnell remains
6 committed to conciliation of this matter, consistent with his position from the onset of the
7 investigation, but respectfully renews his request that the Commission decline to find probable
8 cause to believe that he knowingly and willfully violated 2 U S C § 441f

Respectfully submitted,



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